

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

HENRY WATKINS,	:	
	:	NO. 02-CV-2881
Plaintiff,	:	
	:	
v.	:	
	:	
PENNSYLVANIA BOARD OF	:	
PROBATION & PAROLE,	:	
EDWARD JONES, and MICHAEL BUKATA	:	
	:	
Defendants.	:	
	:	

**DEFENDANTS MEMORANDUM OF LAW IN FURTHER SUPPORT OF THEIR
MOTION FOR FEES AND COSTS PURSUANT TO 28 U.S.C. § 1927**

Defendants, Defendants, Defendants, tDefendants, the Pennsylvania Board of Probation and Parole (the "Board"), Willie E. Jones (improperly pled as Edward Jones) ("Mr. Jones"), and Michael Bukata (Mr. Bukata ("Mr. Bukata")), Defendants), Defendants), by their attorneys, respectfully submit this Memorandum of Law in Further Support of their Motion for Fees and Costs Pursuant to 28 U.S.C. § 1927.

I. INTRODUCTION AND STATEMENT OF FACTS

_____This is a race discrimination case. Plaintiff contends that Mr. Jones and Mr. Bukata mistreated him from approximately 1998 through 2001 and terminated his employment because he is an African American.

On December 12, 2002, Plaintiff's counsel took the deposition of Allen Castor (Mr. Castor), a Pennsylvania Board of Probation and Parole board member. During the deposition,

counselcounsel questioned Mr. Castor about a 1995 settlement agreement entered into between the Board and six (6) individuals, including Mr.Mr. Watkins, more than seven (7) years ago (the Settlement Agreement).

TheThe Settlement Agreement contains a clearly worded confidentialityconfidentiality clause, which precludes the parties disclosing,disclosing, inter alia, the terms and amount of the Settlement Agreement.Agreement. Thus, Defendants made numerous requeThus, Defendants partiesparties in this matter agree to file under seal the porparties Mr. Castor s deposition that pertain to the Settlement Agreement. A summary of the results of Defendants efforts follows:

DATE OF REQUEST	NATURE OF REQUEST AND RESPONSE
December 12, 2002	BeforeBefore the commencementBefore the commencement deposition,deposition, Defendants counsel requested of thethe record that the parties agree to seal Mr.Mr. Castor s deposition transcript. <u>See</u> Allen Castor Deposition Transcript (Castor(Castor Dep.), 4:17 t(Castor Dep.), 4:17 to Plaintiff Plaintiff Plaintiff s Plaintiff s cou request. <u>See id.</u>
DecemberDecember 18, 2002	By letter, Defendants counseBy letter, Defendants counse thethe partiesagree to seal only thosethe parties agree to seal only those ofof Mr. Castor s deposition transcript that pertainpertain to thpertain to the pertain to the S DecemberDecember 18, 2002 Correspondence (Exhibit 3). Plaintiff Plaintiff s counsel failed to respond Defendants request.

January 10, 2003	Before the commencement of depositions in an unrelated case, Defendants' counsel asked whether Plaintiff's counsel would agree with Defendants' previous request to seal portions of deposition transcript. Plaintiff's counsel denied Defendants' request, alleging breach of the Settlement Agreement as a reason for their refusal. See February 12, 2003 Correspondence (Exhibit 4).
February 18, 2003	By letter, Defendant's counsel identified in writing the reason for their refusal to agree to seal portions of Mr. Castor's deposition transcript. See February 18, 2003 Correspondence (Exhibit 5).
February 20, 2003	Before the commencement of the unrelated matter, Defendants' counsel asked whether Plaintiff's counsel intended to set forth in writing the reason for their refusal to agree with Defendants' request to seal portions of Mr. Castor's deposition transcript. Plaintiff's counsel reiterated that they would not agree to seal Mr. Castor's deposition and that Defendants would need to file a motion.
February 25, 2003	By letter, Plaintiff reiterated their refusal to agree to seal Mr. Castor's deposition transcript due to Defendants' alleged breach of the Settlement Agreement. See February 25, 2003 Correspondence (Exhibit 6).

Thus, regardless of the clear language of the stipulation, Plaintiff's counsel repeatedly refused Defendant's requests, citing as a reason for their refusal the Board's alleged breach of the Settlement Agreement. As a result, Defendants were forced to prepare and file an Order with this Court. The attorney's fees and costs associated

with preparing and filing Defendants Motion for Protective Order are \$1,307.72. See Affidavit of Gino J. Benedetti, Esquire (Benedetti Affidavit), ¶¶ 3-5 (Exhibit 1).

On March 10, 2003, the Honorable Charles R. Weiner (Judge Weiner), scheduled a conference call with the parties to hear argument concerning Defendants Motion for Protective Order. Much to Defendants surprise, however, during the conference call Plaintiff s counsel told Judge Weiner that they do not dispute Defendants motion. Judge Weiner therefore informed Defendants that the Court intended to enter the form of order presented by the Defendants in support of their motion.

Thus, by initially refusing Defendants request that the parties amicably agree to seal portions of Mr. Castor s deposition transcript, and subsequently offering no dispute whatsoever in opposition to Defendants Motion for Protective Order, Plaintiff s counsel unreasonably and vexatiously multiplied these proceedings and forced Defendants to incur unreasonable and unnecessary expense. To date, Plaintiff s counsel has not reimbursed Defendants the \$1,307.72 in attorney s fees and costs that they incurred due to Plaintiff s counsel that they incurred multiplication of the proceedings. See March 13, 2003 Correspondence (Exhibit 7); March 14, 2003 Correspondence (Exhibit 7); March 15, 2003 Correspondence (Exhibit 8); March 21, 2003 Correspondence (Exhibit 9). Plaintiff s counsel should therefore be required to satisfy personally

attorney's fees and costs reasonably incurred by the attorney in the
conduct.

Accordingly, Accordingly, Defendants Motion for Fees and Costs Pursuant
MotionMotion for ProtectiveMotion for Protective Order Pursuant to 28 U.S.C.
granted in its entirety.

II. LEGAL ARGUMENT

Section 1927 of Title 28 of the United States Code provides that "[a]ny attorney . . . who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, reasonably incurred because of such conduct. 28 U.S.C. § 1927 (Section 1927)". Section 1927, therefore, permits a court to impose sanctions in those situations when:

- (1) multiplied proceedings;
- (2) unreasonably and vexatiously;
- (3) thereby increasing the cost of the proceedings;
- (4) with bad faith or with intentional misconduct.

LaSalle Nat'l Bank v. First Connecticut Holding Group, LLC, 287 F.3d 279, 288 (3d. Cir. 2002)

In applying Section 1927, the United States Third Circuit Court of Appeals has specifically stated that [all] need not make an express finding of bad faith in so many words, there must at least be statements on the record which [the] court can construe as an implicit finding of bad faith. Zuk v. Eastern Pennsylvania Psychiatric Institute

Pennsylvania,, 103 F.3d 294, 297-98 (3d Cir. 1996) (internal citation omitted).omitted). See also Ford v. Temple Hosp., 790 F.2d 342, 350 (3d Cir. 1986) (district court may impose sanctions on the plaintiff's actions was frivolous, unreasonable, or without foundation, even though the plaintiff acted in good faith.") (quoting Christiansburg Garment Co. v. Eddy, 421 (1978)).

Thus, bad faith is found where there is "indication of an intentional advancement of a baseless contention that is made for an ulterior purpose . . . [and] . . . may be express or inferred from statements made on the record from which the court is proving bad faith. Horizon Unlimited, Inc. v. R. Horizon Unlimited, Inc., No. CIV. A. 97-7430, 1999 WL 675469, at *3 (E.D. Pa. Aug. 31, 1999) (internal citation omitted) (emphasis added) (Exhibit 10). Once a finding of bad faith has been made, the appropriateness of sanctions is a matter entrusted to the discretion of the district court." Boykin v. Bloomsburg Univ. of Pennsylvania,, 905 F. Supp. 1335, 1347 (M.D. Pa. 1995), aff'd, 91 F.3d 122 (3d Cir. 1996), (quoting Quiroga v. Hasbro, 934 F.2d 497, 505 (3d Cir. 1991)).

In this case, Plaintiff's counsel acted in bad faith by repeatedly denying Defendants' reasonable requests for discovery of Mr. Castor's deposition while, as illustrated during the March 10, 2003 conference call, they in fact had no good faith reason to

disputedispute Defendants request. dispute Defendants request. Thus, P
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 F.2dF.2d at 350; Horizon Unlimited,Horizon Unlimited, Inc, 1999 WL 675469, a
 result,result, Plaintiff s counsel vexatiously multiplied these
 proceedingsproceedings by requiring Defendants to prepare aproceedings
 appropriate motion for protective order. See LaSalle Nat l Bank
 287287 F.3d at 288; Zuk, 103 F.3d at 297-98; Horizon Unlimited, Inc.,
 1999 WL 675469, at *3.

Thus,Thus, Plaintiff s counsel sThus, Plaintiff s counsel shouldT
 DefendantsDefendants \$ 1,307.72, the reasonable attorney s fees and cost
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 See Exhibit 1 (Benedetti Affidavit), ¶¶ 3-5. See also Boykin, 905
 F.F. Supp. at 1347-48 (The standard utilized to calculate the
 properproper award of attorney s fees underproper award of attorney s f
 lodestlodestarlodestar methodlodestar method . . . [which] is calculate
 reasonable hourly rate by the number of hours reasonably expended
 on the suit.).

Accordingly,Accordingly, Defendants motion for fees and costs pursuant
 Section 1927 should be granted in its entirety.

III. CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court grant their Motion and enter an Order requiring Plaintiff's counsel to pay to Defendants, within five (5) days of the date of the Order, \$1,307.72 in reasonable attorney's fees and costs associated with filing Defendants' Motion for Protosts associated with the Order.

Respectfully submitted,

MILLER, ALFANO & RASPANTI, P.C.

By:

GINO J. BENEDETTI, ESQUIRE
JENNIFER A. PARDA, ESQUIRE
Attorney I.D. Nos. 59584 and 88448
1818 Market Street, Suite 3402
Philadelphia, PA 19103
(215) 972-6400

Attorneys for Defendants,
Pennsylvania Board of Probation
and Parole, Willie E. Jones,
and Michael Bukata

Dated: March 24, 2003

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CERTIFICATE OF SERVICE

____I herebyI hereby certify that a true and correct copy of the foregoing pleading,pleading, Defendants Motion for Fees and Costs Pursuant to § 1927 andand accompanying Memorandum of Law, has been served on this date upon the individuals and in the manner indicated below:

VIA HAND DELIVERY

Robert J. Sugarman, Esquire
Debbie L. Goldberg, Esquire
Sugarman & Associates, PC
Robert Morris Building
100 N. 17th Street, 11th floor
Philadelphia, PA 19103-2737

Attorneys for Plaintiff,
Henry Watkins

By:

Jennifer A. Parda, Esquire
Attorney No. 88448
1818 Market Street, Suite 3402
Philadelphia, PA 19103
(215) 964-7200

Attorney for Defendants,
Pennsylvania Board of
ProbationProbation and Parole, Willie E.
Jones, and Michael Bukata

Dated: March 24, 2003

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